IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7927 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

HANIFBHAI ISAMILBHAI SODA

Appearance:

Mrs. B.R. Gajjar, Ld.GOVT PLEADER for Petitioner

MR AMAR D MITHANI for Respondent No. 1

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 02/08/2000

ORAL JUDGEMENT

Rule. Mr. Amar Mithani, learned counsel appearing on behalf of the respondent waives service of rule.

2. Respondent Hanifbhai Ismailbhai Sida worked under

Sakkarbaug Zoo at Junagadh as daily labour. Thereafter, he was asked by the Zoo authorities to report for work at another place in Dungarpur Nursery. According to the respondent, he was in need of money and therefore he went there, but the Nursery authority did not allot him work. After some time respondent came back and took up the matter with the government for referring his case to the Labour Court. The government referred the matter to Labour Court, Junagadh which registered his reference being Reference (LCJ) No. 18 of 1996. Labour Court after taking evidence and after hearing the parties, passed an order for reinstatement of the respondent in his post with 40 % back wages and continuity of service. Having felt aggrieved by the order of the Labour Court, petitioner State filed this petition for quashing the judgment & award of the Labour Court passed on 17-4-2000.

3. Mrs. B.R. Gajjar, learned AGP appearing on behalf of the petitioner submitted that, the respondent was admittedly working as daily labour in Sakkarbaug Zoo, but since there was no work, he was asked to go to Dungarpur Nursery, but there also no work was available. According to the respondent, he was not allotted work in the nursery. Petitioner however claims that, respondent did not work in Dungarpur Nursery. Be that as it may. The respondent was without any work as a daily wager since 30-9-1995. It is submitted by learned AGP that the daily wagers are engaged by Zoo authority or by nursery authority, accordingly to the permissible limit of budget provisions. Learned AGP accordingly submitted that, as per budget provision, the Zoo authority or Nursery authority engages people as daily wagers and when there is no fund the daily wagers are discontinued. Learned counsel Mr. Mithani for the respondent submitted that the respondent is residing in Sakkarbaug area and therefore when there is work in the Zoo for daily labour he should be engaged according to his seniority as daily labour. If there is no work, in that case, he is agreeable to work in other areas but the authority may consider engaging him as daily labour in nearby areas, so that he may perform his work without shifting to far areas. The submission made by learned counsel for the respondent appears to be reasonable. Daily labours are not well paid, and therefore, if they are sent at long distance, it may not be possible for them to maintain with the meagre wage they are getting as daily labour. Therefore the authority may consider giving daily work to the respondent near Sakkarbaug Zoo or nearby areas, so that he may not face financial hardship by his engagement long away from his house.

3. It is an admitted fact that the respondent was working as daily labour in Sakkarbaug Zoo and a register of daily wagers are maintained by the Zoo authorities. I do not find any illegality in the order passed by the Labour Court as name of respondent can well be entered in the register of daily wagers with his original seniority, so that he may not be deprived of getting work according to his seniority. If the seniority is maintained, then the department will be in a position to allot work by rotation to many daily wagers whose names are maintained in the register. Therefore, I do not find any illegality in the order of reinstatement of the respondent as daily wager with continuity of his service . However, as regards back wages, since the respondent did not perform any work or duty and as the petitioner also did not get any service from the respondent during the period of discontinuance till reinstatement, I am of the view that the respondent should not be paid any back wages. With the aforesaid modification in the award of the Labour Court, present petition is allowed in part. Rule made absolute to the aforesaid extent. However, I make no order as to costs. The petitioner is directed to comply with the Labour Court order, as modified by the present order, within a period of four weeks from the date of receipt of present order.

DT: 2-8-2000 (P.K. Sarkar, J)

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